



COM/GHS/kz1 10/25/2019

**FILED**

10/25/19  
10:51 AM

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services.

Rulemaking 12-12-011

**AMENDED PHASE III. C. SCOPING MEMO AND RULING  
OF ASSIGNED COMMISSIONER**

**Summary**

This *Amended Scoping Memo and Ruling* for Phase III of this proceeding (*Amended Phase III. C. Scoping Memo*) sets forth the category, issues, need for hearing, schedule, and other matters necessary to scope this proceeding pursuant to Public Utilities (Pub. Util.) Code § 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure.<sup>1</sup>

**1. Background**

Commencing with Decision (D.) 13-09-045, the Commission adopted rules and regulations to protect public safety while allowing Transportation Network Companies (TNC) to provide transportation services in California.<sup>2</sup> As more information about the TNC industry and their business models became known, the Commission has issued additional decisions to maintain the appropriate

---

<sup>1</sup> California Code of Regulations, Title 20, Division 1, Chapter 1; hereinafter, Rule or Rules.

<sup>2</sup> The Commission's assertion of authority over TNCs has been confirmed by the Legislature with the enactment of Pub. Util. Code § 5430 *et seq.*, particularly §§ 5440 and 5441. (*See* Ch. 389, Sec. 1 (AB 2293, Effective January 1, 2015).)

regulatory oversight necessary to promote public safety but without stifling an industry offering a mode of transportation that has gained widespread public support in California.

In accordance with Ordering Paragraph 19 of D.16-04-041, the *Scoping Memo and Ruling* dated October 26, 2016 opened a Phase III in this proceeding, and Phase III was broken down into two sub phases: III. A. and III. B. While many of the scoped issues from Phases III. A. and B. have been resolved, there are still some issues that require further Commission analysis and investigation before final decisions can be issued.

As a result the previous *Scoping Memo*, dated April 27, 2018, opened Phase III. C. in order to address issues not yet resolved from Phase III. B. In addition Phase III. C. will address any new issues that have come to the Commission's attention while performing its duty to ensure that the TNCs operate in a manner consistent with the authority that the Commission has granted them.

This *Amended Phase III. C. Scoping Memo* supplements and clarifies the scope of this proceeding by adding additional questions to issues previously scoped and adjusts the ordering of the subject tracks. With respect to trip data, this *Amended Phase III. C. Scoping Memo* incorporates by reference the questions regarding trip data that were set forth in the *Amended Phase III. B. Scoping Memo and Ruling* dated June 12, 2017, the *Phase III. C. Scoping Memo and Ruling* dated April 27, 2018, and the *Assigned Commissioner's Ruling Seeking Comments on Proposed Data Reporting Requirements*, dated February 8, 2019. Parties may file additional comments to the previously scoped issues to the extent their comments raise new issues. Otherwise, in their comments, the parties may refer the Commission to their previously filed comments.

## **2. Scope of the Issues**

### **2.1. Accessibility (Previously Identified as Track 5)**

The Commission opened a separate Rulemaking (R.) 19-02-012 to address the accessibility issues raised by Senate Bill 1376, and codified by Pub. Util. Code § 5440.5.<sup>3</sup>

### **2.2. Data Confidentiality, Collection, and Sharing Issues (Previously identified as Track 3)**

#### **2.2.1. Confidentiality Issues**

1. Should the Commission revise D.13-09-045 and eliminate or modify footnote 42, which instructed TNCs to file confidentially the reports required by D.13-09-045?
2. Should the Commission deem that reports the TNCs must file pursuant to D.13-09-045 should not automatically be treated as confidential?
3. Should the Commission deem that reports the TNCs must file pursuant to any decision issued in this proceeding should not automatically be treated as confidential?
4. If a TNC wishes to claim that any reports it is required to file pursuant to a decision issued in this proceeding are protected from public disclosure on the grounds of either trade secrets, privacy, or any other claim of confidentiality, must the TNC file a motion for confidential treatment and comply with the requirements in D.17-09-023 (Phase 2A Decision Adopting General Order 66-D and Administrative Processes for Submission and Release of Potentially

---

<sup>3</sup> *Order Instituting Rulemaking to Implement Senate Bill 1376 Requiring Transportation Network Companies to Provide Access for Persons with Disabilities, Including Wheelchair Users who need a Wheelchair Accessible Vehicle.*

Confidential Information) and General Order 66-D for establishing a claim for confidential treatment?

5. State all facts and supporting authorities to support or dispute a TNC's claim that the contents of any reports that are required to be filed pursuant to a decision issued in this proceeding are protected from public disclosure.

### **2.2.2. Granularity and Disaggregation of Trip Data Collected**

The questions posed in this Section and 2.2.3 pertain to TNC reporting of trip data for the purpose of public disclosure or disclosure to interested government entities. This reporting would be in addition to TNCs' annual reports as required by D.13-09-045. The questions posed below build upon the issues raised in the February 6, 2019 Assigned Commissioner Ruling.

1. At what level of granularity and disaggregation should TNCs report trip data? For example, for each trip taken, should the data be reported as to the exact date and time the trip occurred; day of the week the trip occurred; the hour within which the trip started and ended; the location of a passenger at the time of trip request as well as the locations of a driver at time of trip request, passenger pick-up, and passenger drop-off, by geographic coordinates (*i.e.* latitude and longitude), zip code, or census block; the number of passengers; and/or the trip service category (*e.g.* pooled or nonpooled service);?
2. Should the Commission require TNCs to report the miles traveled in Periods 1, 2, and 3 for each trip?<sup>4</sup>
3. Should the Commission require TNCs to report additional information about fare charged for each trip including the tip amount of the total amount paid and whether surge pricing was in effect?

---

<sup>4</sup> Periods 1, 2, and 3 are defined in D.14-11-043 at 2

4. Should the Commission require TNCs to report when a passenger requests a wheelchair accessible vehicle (WAV) and whether the trip occurred in a WAV?
5. For TNC trip data that is deemed non-confidential, should such information be shared only with interested government entities;?
6. If non-confidential trip data should be shared only with interested government entities, how should those entities to be selected? (*e.g.* metropolitan planning organizations, state and local transportation agencies, and the State Air Resources Board)
7. How should the information be made available to interested government entities? For example, should such information be hosted by a third-party entity (*e.g.* university, research institution, etc.)?

#### **2.2.3. Sharing Exempted Trip Data with Interested Government Entities**

1. If the Commission determines that any or all trip data collected from a TNC is exempt from public disclosure on either trade secrets, privacy or any other established claim of confidentiality, should any or all exempted trip data be shared with interested government entities?
2. If the answer to 2.2.3.1. is yes, how should the Commission determine which interested government entities receive the data (*e.g.* metropolitan planning organizations, state and local transportation agencies, and the State Air Resources Board)?
3. If the answer to 2.2.3.1. is yes, should the exempted trip data be shared with interested government entities in a disaggregated format? If so, what format should disaggregation encompass? For example, for each trip taken, should the data be reported as to the day of the week the trip occurred; the hour within which the trip started and ended; the zip code or census block within which each trip started and ended; the passenger

occupancy; and/or the trip service category (*e.g.* pooled or nonpooled service)?

4. If any or all trip data collected from TNCs that is exempt from public disclosure is to be shared with interested government entities, should the exempted trip data be provided pursuant to a nondisclosure agreement? If so, what terms should be included in the nondisclosure agreement?
5. How should exempted trip data be made available to interested government entities? For example, should such information be hosted by a third-party entity (*e.g.* university, research institution, etc.)?

**2.3. Transportation of Minors (Previously Identified as Track 6)**

1. Should TNC apps be required to verify age and prohibit minors from utilizing the app under any and or all circumstances?
2. Should legal guardians of minors be allowed to authorize the transportation of minors by drivers of TNCs that do not primarily market to children?
3. Should TNCs that don't primarily transport minors be required to allow only drivers who have been certified by Trustline to transport minors when authorized by legal guardians?
4. Should the TNCs be required to compile information on minors transported on their platforms or reports of trip cancellations due to suspicion of minors utilizing the app without proper authorization?
5. Should TNCs be required to provide drivers with the opportunity to expunge low ratings given in response to trips cancelled due to suspicion or confirmation of a minor passenger?

**2.4.Catch-All Safety Category (Previously Identified as Track 7)**

1. Should insurance levels, or coverage requirements, for TNCs be revisited in light of the findings of the report composed pursuant to Pub. Util. Code § 918.2?
2. Should TNCs be required to provide and prominently display a customer service number with texting capabilities and/or e-mail address?
3. Should TNC apps be barred from collecting user data when the user is not using the app?<sup>5</sup>
4. Should TNC apps – even when open – be barred from collecting certain types of user data, or be required to offer users the choice to not have certain types of data be collected?
5. For collected user data, should TNC apps be required to more clearly or specifically inform users of the types of data that will be collected, how the data may be used, and how user privacy will be maintained?
6. Should TNC apps always display driver name/photo, license plate number, vehicle make/model, and vehicle color?
7. Should there be a system (*e.g.* TNC app or third-party data base) to track driver hours across multiple TNC platforms?
8. Should there be a system to receive TNC driver attestations on their hours logged on to multiple TNC platforms?
9. Should the Commission impose requirements on TNCs to address safety recalls for vehicles used in TNC service?
10. Should the Commission develop industry-wide zero tolerance standards under Safety Requirement D of D.13-09-045? If so, what types of protocols and standards should the Commission adopt?
11. Should the Commission expand the zero-tolerance policy of D.13-09-045 to include all incidents that involve a TNC,

---

<sup>5</sup> Uber's app on iPhones collects user data all the time rather than only when the app is on.

such as sexual assault and sexual harassment by drivers or passengers, transporting unaccompanied minors, theft, and other safety issues?

12. Should the Commission develop criteria and reporting requirements for all passenger carriers to report incidents of a pre-determined nature (e.g., accidents involving buses, accidents and incidents resulting in bodily injuries or death, media-reported incidents, etc.)?
13. Should the Commission impose rules on the sharing of a driver app between an account holder and persons that have not complied with the safety requirements (e.g., driver's license and criminal background check, and driving training) and not authorized by a TNC to drive on the account?
14. Should the TNCs be required to institute a zero-tolerance policy on the sharing of apps?
15. If an enforcement officer or police officer has evidence of app sharing, should the zero-tolerance also apply to any TNCs whose trade dress is displayed on the vehicle regardless if that TNC's app is on?
16. Should General Order 157-E, Part 3.01 be modified to require the driver to produce proof of identity, such as their driver's license along with the waybill to "...any Commission or airport enforcement officer, or to any official of a city, county, or city and county authorized to inspect waybills pursuant to Pub. Util. Code Section 5371.4(h)..."?
17. Should the TNCs be required to report on app sharing complaints and their resolution as part of their annual reporting of data to the Commission?
18. Should the Commission recommend to the legislature to codify the prohibition of app sharing?



**2.5. Autonomous Vehicles (Previously Identified as Track 8)**

1. How should the Commission define what constitutes an “autonomous vehicle” (AV) used in prearranged passenger transportation service for-hire?
2. How should the Commission define what constitutes a “remote operator” of an AV used in prearranged passenger transportation service for-hire?
3. What requirements under the Charter-Party Carriers (TCP) Act and all applicable Commission decisions, rules, and orders which apply to drivers physically present in vehicles should the Commission also adopt for “remote operators” of AVs used in prearranged passenger transportation service?
4. What amount of insurance coverage (*i.e.* evidence of ability to respond to judgments for personal injury, death, or property damage) should the Commission require of a person or entity to provide prearranged passenger transportation service using AVs?
5. Should the Commission require that certain information, such as how to contact the person or entity authorized to provide prearranged passenger transportation service using AVs, be made available to passengers inside an AV operated without a driver in the vehicle?
6. Should the Commission require certain unique identifying information be made available on each AV, operated without a driver in prearranged passenger transportation service, to enable passengers to easily identify the exact AV offered for that trip?
7. Should the Commission require that a two-way communication link, between passengers and the person or entity authorized to provide prearranged passenger transportation service using AVs, be available and maintained at all times in each AV operated without a driver in the vehicle?

8. How should the information be made available to interested government entities? For example, should such information be hosted by a third-party entity (*e.g.* university, research institution, etc.)?
9. Should the Commission designate a new regulatory category, such as Autonomous Vehicle Carrier (AVC), to authorize a person or entity to provide prearranged passenger transportation service using AVs operated without a driver in the vehicle?
10. In a new regulatory category, what requirements of TCP or TNC permit-holders under the TCP Act and all applicable Commission decisions, rules, and orders should the Commission also adopt in order to authorize a person or entity to provide prearranged passenger transportation service using AVs operated without a driver in the vehicle?
11. In a new regulatory category, what information should the Commission require to be reported by a person or entity authorized to provide prearranged passenger transportation service using AVs operated without a driver in the vehicle to the Commission; how often (*e.g.* monthly, annually, per trip, *etc.*) should this information have to be reported to the Commission; and under what conditions, if any, should this information be made available to the public?
12. Should the Commission prohibit or impose any requirements on prearranged passenger transportation service to, from, or within airports using AVs operated without a driver in the vehicle?
13. Should the Commission prohibit or impose any requirements on prearranged passenger transportation for unaccompanied minors in AVs operated without a driver in the vehicle?
14. Should the Commission impose any requirements to ensure the safety of all passengers on the chartering by more than one party (*i.e.* fare-splitting) of AVs operated without a driver in the vehicle?

15. Should the Commission modify D.13-09-045 to allow TNCs to own AVs or allow AVs leased or rented by TNCs from partnering entities on their online-enabled applications or platforms?
16. Should the Commission modify D.16-04-041 to allow inspections of AVs performed by the manufacturers of AVs to fulfill the inspection requirements for vehicles used to provide prearranged passenger transportation service using online-enabled applications or platforms?
17. Should the Commission modify the definition of “personal vehicle” pursuant to D.16-12-037 to include AVs used to provide prearranged passenger transportation service using online-enabled applications or platforms?

## **2.6. Zero Emission Vehicles**

The Commission intends to open a new rulemaking that will address implementation of Senate Bill (SB) 1014 (Skinner, 2018), the California Clean Miles Standard and Incentive Program, and other issues related to passenger carriers and greenhouse gas emissions.

## **3. Scheduling**

Either I or one of the assigned Administrative Law Judge (ALJs) will issue a subsequent ruling that sets a schedule for briefing of issues as well as for workshops.

## **4. Categorization**

In the Order Instituting Rulemaking, issued on December 20, 2012, the Commission preliminarily determined that the category of the proceeding was quasi-legislative. The Scoping Memo and Ruling from Phase I of this proceeding, issued on April 2, 2013, confirmed that categorization.

## **5. Need for Hearing**

The Commission in the Order Instituting Rulemaking also preliminarily determined that hearings are not required. This Scoping Memo determines that hearings are not needed.

## **6. *Ex Parte* Communications**

In a quasi-legislative proceeding such as this one, *ex parte* communications with the assigned Commissioner, other Commissioners, their advisors, and the ALJs are permitted without restriction or reporting as described at Pub. Util. Code § 1701.4(b) and Article 8 of the Rules.<sup>6</sup>

But with respect to communications with the ALJs, any party wishing to communicate with the ALJs, even as to a procedural matter, shall be by e-mail only, with the e-mail sent simultaneously to the proceeding service list.

An e-mail sent only to the ALJs will not receive a response.

Telephone calls to the ALJs will not be answered.

Telephone voice mail messages left with the ALJs will not be returned.

## **7. Assigned Commissioner and Assigned ALJs**

Genevieve Shiroma is the assigned Commissioner. Robert M. Mason III and Debbie Chiv are the assigned ALJs.

## **8. Filing, Service, and Service List**

Rule 1.10 sets out the general rules for service and filing of documents at the Commission. Parties must adhere to the following rules for this proceeding unless specifically instructed differently:

- When serving documents on my office, parties must only provide electronic service. Parties must NOT send hard

---

<sup>6</sup> Interested persons are advised that, to the extent that the requirements of Rule 8.1 *et seq.* deviate from Pub. Util. Code §§ 1701.1 and 1701.4 as amended by SB 215, effective January 1, 2017, the statutory provisions govern.

copies of documents to me or my advisors unless specifically instructed to do so.

- As required by Rule 1.10, when serving document on the assigned ALJ(s), parties must provide both an electronic copy and a hard copy.

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing. Parties can find information about electronic filing of documents at the Commission's Docket Office at [www.cpuc.ca.gov/PUC/efiling](http://www.cpuc.ca.gov/PUC/efiling). All documents formally filed with the Commission's Docket Office must include the caption approved by the Docket Office and this caption must be accurate.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

## **9. Discovery**

Discovery may be conducted by the parties consistent with Article 10 of the Commission's Rules. Any party issuing or responding to a discovery request shall serve a copy of the request or response simultaneously on all parties. Electronic service under Rule 1.10 is sufficient, except Rule 1.10(e) does not apply to the service of discovery and discovery shall not be served on the ALJ.

Deadlines for responses may be determined by the parties. Motions to compel or limit discovery shall comply with Rule 11.3.

#### **10. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao> or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

#### **11. Schedule for Completion**

It is the Commission's intent to complete this proceeding within 18 months of the date this Scoping Memo is filed. This deadline may be extended by order of the Commission pursuant to Pub. Util. Code § 1701.5(a) and (b).

#### **IT IS RULED that:**

1. The category of this proceeding continues to be quasi-legislative.
2. The scope of the issues for Phase III. C. of this proceeding is as stated in Section 2 of this *Amended Phase III. C. Scoping Memo*.
3. Hearings are not necessary.
4. *Ex parte* communications are permitted without restriction or reporting as described at Public Utilities Code § 1701.4(b) and Article 8 of the Commission's Rules of Practice and Procedure.

Dated October 25, 2019, at San Francisco, California.

/s/ GENEVIEVE SHIROMA

Genevieve Shiroma  
Assigned Commissioner